

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

ROBERT B. EVANS,

Plaintiff,

vs.

SCOTT PAUL HOFFMAN and
SUPERIOR, LTD., a Wisconsin
corporation,

Defendants.

No. C03-1038

INSTRUCTIONS TO THE JURY

INTRODUCTION/DUTIES/BURDEN

INSTRUCTION NO. 1

MEMBERS OF THE JURY:

Now that you have heard the evidence, it becomes my duty to give you the instructions of the Court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence.

Counsel will quite properly refer to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you of course are to be governed by the instructions.

You are not to judge the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors, and to arrive at a verdict by applying the same rules of law, as given in the instructions of the Court.

This case should be considered and decided by you as an action between persons of equal standing in the community. A corporation is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, stand equal before the law, and are to be dealt with as equals in a court of justice.

Whenever a party must prove something they must do so by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

The owner of a vehicle is responsible for the negligence of those who drive the vehicle with the owner's consent. If you find defendant Scott Hoffman responsible for the accident at issue herein, Superior, Ltd., will also be found to be responsible for any damages awarded.

EVIDENCE

INSTRUCTION NO. 2

You shall base your verdict only upon the evidence and these instructions. Evidence is: (1) testimony in person or by deposition; (2) exhibits received by the court; (3) stipulations, which are agreements between the attorneys; and (4) any other matter admitted. Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide. The following are not evidence: (1) statements, arguments, questions and comments by the lawyers; (2) objections and rulings on objections; and (3) anything you saw or heard about this case outside the courtroom.

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable. In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witness's testimony. There are many factors which you may consider in deciding what testimony to believe, for example: (1) whether the testimony is reasonable and consistent with other evidence you believe; (2) the witness's appearance, conduct, intelligence, memory and knowledge of the facts; (3) whether the witness has given statements in the past that are inconsistent with his or her testimony at trial; and (4) the witness's interest in the trial, their motive, candor, bias and prejudice.

A witness may be discredited or impeached by contradictory evidence; by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness's present testimony.

If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony to the best of your ability as if it had been given live in court.

During this trial, you have heard the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion. Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

The expert witnesses were asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

NEGLIGENCE

INSTRUCTION NO. 3

The plaintiff in this case, Robert Evans, sues defendants Scott Hoffman and Superior, Ltd., alleging that Mr. Hoffman negligently drove his vehicle into the back of Mr. Evans's vehicle causing substantial injuries. In order for the plaintiff to prove his claim of negligence, he must prove the following numbered propositions by the preponderance of the evidence.

1. THAT DEFENDANT SCOTT HOFFMAN WAS NEGLIGENT IN ONE OR MORE OF THE FOLLOWING WAYS:

- a. In failing to keep a proper lookout.

Iowa law requires that a person such as Scott Hoffman must keep a "proper lookout." The term "proper lookout" means the vigilance and awareness that would be maintained by an ordinary, reasonable, and prudent person under the same or similar circumstances. "Proper lookout" means more than merely seeing any obstacles to safety. It means being watchful of one's own movements in relation to the things that one sees or which could be seen in the exercise of ordinary care. A violation of this law is negligence.

OR

- b. In failing to be able to stop his vehicle within an assured clear distance ahead.

Iowa law states that no person shall drive any vehicle on a highway at a speed greater than that which will permit them to stop within the assured clear distance ahead. The words "within the assured clear distance ahead" mean the distance from which noticeable objects, reasonably expected or anticipated to be upon the highway, may be seen. A violation of this law is negligence.

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing

something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

2. THE NEGLIGENCE WAS A PROXIMATE CAUSE OF DAMAGE TO PLAINTIFF ROBERT EVANS.

The conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct. There can be more than one proximate cause of injury or damage. "Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

3. AMOUNT OF DAMAGE.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, then you must consider the defense of comparative negligence as explained in Instruction No. 4.

COMPARATIVE NEGLIGENCE

INSTRUCTION NO. 4

Damages may be the result of negligence of more than one person. In comparing negligence, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of plaintiff Robert Evans and defendant Scott Hoffman, and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each party's negligence contributed to the damages.

If you find that plaintiff Robert Evans was negligent and that the plaintiff's negligence was more than 50% of the total negligence, then the plaintiff cannot recover damages. However, if you find that the plaintiff's negligence was 50% or less of the total negligence, then **I** will reduce the total damages by the percentage of his negligence.

To establish their defense of comparative negligence, Scott Hoffman and Superior, Ltd., must prove both of the following numbered propositions:

1. Plaintiff Robert Evans was negligent in any of the following ways:

a. Failing to keep a proper lookout.

Proper lookout has been defined for you in Instruction No. 3. With respect to the plaintiff's duty to maintain a proper lookout to the rear, the duty of lookout to the rear does not require constant attention at all times, but only sufficient observation to establish an awareness of the presence of others at a time when a maneuver is contemplated which may endanger a following vehicle. A violation of this law is negligence.

b. Failing to signal.

Iowa law does not require a driver to use a turn signal in all instances. A turn signal is only required in the event another vehicle may be affected by the driver's actions. A violation of this law is negligence.

c. Making an abrupt lane change in front of defendant Scott Hoffman's vehicle.

Iowa law requires that a vehicle be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety. A violation of this law is negligence.

2. Plaintiff Robert Evans's negligence was a proximate cause of his damage.

"Proximate cause" has already been defined for you in Instruction No. 3.

If the defendants failed to prove these things, then the defendants have not proved this defense. If the defendants have proved this defense, then you will assign a percentage of negligence against the plaintiff and include the plaintiff's negligence in the total percentage of negligence found by you in answering the special verdicts.

DAMAGES
INSTRUCTION NO. 5

If you find that plaintiff Robert Evans is entitled to recover damages, you shall consider the following items:

1. **PAST MEDICAL EXPENSES:** The plaintiff may recover the reasonable value of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time. In determining the reasonable cost of these expenses, you may consider the amount charged, the amount actually paid, or any other evidence of what is reasonable and proper for such medical expenses. The billed amount is relevant only if that figure was paid or an expert witness has testified to the reasonableness of the charges.
2. **FUTURE MEDICAL EXPENSES:** The plaintiff may recover the present value of reasonable and necessary hospital charges, doctor charges, prescriptions, and other medical services that will be incurred in the future.
3. **PAST LOSS WAGES :** The plaintiff may recover the reasonable value of lost wages from the date of injury to the present time.
4. **LOSS OF FUTURE EARNING CAPACITY:** The plaintiff may recover the present value of any loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.
5. **PAST LOSS OF FULL BODY:** The plaintiff may recover for any loss of function of the body from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner.
6. **FUTURE LOSS OF FULL BODY:** The plaintiff may recover the present value of future loss of function of the body.
7. **PHYSICAL AND MENTAL PAIN AND SUFFERING IN THE PAST:** The plaintiff may recover physical and mental pain and suffering from the date of injury to the present time. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and

suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

8. PHYSICAL AND MENTAL PAIN AND SUFFERING IN THE FUTURE: The plaintiff may recover the present value of future physical and mental pain and suffering.

The amount you assess for several of these items of damages cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the defendants as proved by the evidence.

Future damages must be reduced to present value. “Present value” is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future losses.

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Robert Evans is 41 more years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Mr. Evans’s health, habits, occupation, and lifestyle, when deciding issues of future damages.

In arriving at an item of damage or any percentage of fault, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damages and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

Duty to Mitigate Damages

Defendants Scott Hoffman and Superior, Ltd., claim plaintiff Robert Evans was at fault for failing to mitigate his damages by not exercising ordinary care to follow medical advice and treatment and by not maintaining employment reasonably available to him. The plaintiff has a duty to exercise ordinary care to reduce, minimize, or limit his damages. The plaintiff also has a duty to not do something unreasonable under the circumstances that contributes to his damages. To prove their claim of failure to mitigate, the defendants must prove all of the following:

1. There was something the plaintiff could do, or avoid doing, to mitigate his damages;
2. Requiring the plaintiff to do so was reasonable under the circumstances;
3. The plaintiff acted unreasonably in failing to undertake the mitigating activity; and
4. The plaintiff's failure to undertake the mitigating activity proximately caused an identifiable portion of his damages.

Do not award any portion of plaintiff's damages that could have reasonably been avoided through mitigation of damages.

Aggravation of Pre-Existing Condition

If you find that plaintiff Robert Evans had a pre-existing back condition before this incident and this condition was aggravated by this incident, thus causing further suffering, then the plaintiff is entitled to recover damages caused by the aggravation. The plaintiff is not entitled to recover for any physical ailment or disability that existed before this incident or for any injuries or damages that the plaintiff now has that were not caused by defendant Scott Hoffman's actions. If, however, no apportionment between the plaintiff's pre-existing back condition and the plaintiff's injuries caused by defendant Scott Hoffman's actions can be made, the defendants are responsible for the plaintiff's entire damage.

Previous Infirm Condition

If you find plaintiff Robert Evans's pre-existing back condition made him more susceptible to injury than a person in normal health, then defendants Scott Hoffman and Superior, Ltd., are responsible for all injuries and damages which are experienced by the plaintiff proximately caused by defendant Scott Hoffman's actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

DELIBERATIONS
INSTRUCTION NO. 6

Upon retiring you shall select a foreperson. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views. Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. Remember you are not partisans or advocates, but are judges—judges of the facts. Your sole interest is to find the truth and do justice.

I am giving you the following verdict form. If you all agree to the verdict, it will be signed by each juror. When you have agreed upon your verdict and have signed it, inform the Court Attendant.

DATED this _____ day of August, 2005.

JOHN A. JARVEY
Magistrate Judge
UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF IOWA
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ROBERT B. EVANS,

Plaintiff,

vs.

SCOTT PAUL HOFFMAN and
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Defendants.

No. C03-1038

VERDICT FORM

QUESTION NO. 1: Did plaintiff Robert Evans prove that defendant Scott Hoffman was negligent in the operation of his vehicle on February 27, 2003? (See Instruction No. 3)

Answer "Yes" or "No"

ANSWER: _____

[If your answer is "yes," then answer Question No. 2. If your answer is "no," do not answer any further questions, just sign this form below.]

QUESTION NO. 2: Was the negligence of defendant Scott Hoffman a proximate cause of injury to plaintiff Robert Evans? (See Instruction No. 3)

Answer "Yes" or "No"

ANSWER: _____

[If your answer is "yes," then answer Question No. 3. If your answer is "no," do not answer any further questions, just sign this form below.]

VERDICT FORM (Cont'd)

QUESTION NO. 3: Did defendants Scott Hoffman and Superior, Ltd., prove that plaintiff Robert Evans was negligent? (See Instruction No. 4)

Answer "Yes" or "No"

ANSWER: _____

[If your answer is "yes," then answer Question No. 4. If your answer is "no," then go on to Question No. 6.]

QUESTION NO. 4: Was the negligence of plaintiff Robert Evans a proximate cause of any damage he suffered? (See Instruction No. 4)

Answer "Yes" or "No"

ANSWER: _____

[If your answer is "yes," then answer Question No. 5. If your answer is "no," then go on to Question No. 6.]

QUESTION NO. 5: Using 100% as the total negligence of plaintiff Robert Evans and defendant Scott Hoffman, what percentage of total negligence do you assign to plaintiff Robert Evans and what percentage of the total negligence do you assign to defendant Scott Hoffman?

ANSWER:

Plaintiff Robert Evans _____ %

Defendant Scott Hoffman _____ %

TOTAL 100 %

[If you find plaintiff Robert Evans to be more than 50% negligent, do not answer Question No. 6.]

VERDICT FORM (Cont'd)

QUESTION NO. 6: State the amount of damages sustained by plaintiff Robert Evans for each of the following items of damage. Do not take into consideration any reduction of damages due to plaintiff Robert Evans's negligence. If plaintiff Robert Evans has failed to prove any item of damage, enter a "0" for that item. (See Instruction No. 5)

1. Past medical expenses	\$ _____
2. Future medical expenses	\$ _____
3. Loss of past earning capacity	\$ _____
4. Loss of future earning capacity	\$ _____
5. Past loss of full body	\$ _____
6. Future loss of full body	\$ _____
7. Physical and mental pain and suffering in the past	\$ _____
8. Physical and mental pain and suffering in the future	\$ _____
TOTAL (add the separate items of damage)	\$ _____

_____ FOREPERSON	_____ JUROR
_____ JUROR	_____ JUROR
_____ JUROR	_____ JUROR
_____ JUROR	_____ JUROR